

# GENERAL AGREEMENT ON

RESTRICTED

SCM/M/54

20 January 1992

Special Distribution

## TARIFFS AND TRADE

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Committee on Subsidies and  
Countervailing Measures

MINUTES OF THE MEETING HELD  
ON 22 OCTOBER 1991

Chairman: Ms. Angelina Yang (Hong Kong)

1. The Committee on Subsidies and Countervailing Measures ("the Committee") held a regular meeting on 22 October 1991.
2. The Committee adopted the following agenda:
  - A. Examination of countervailing duty laws and/or regulations of signatories of the Agreement<sup>1</sup> (SCM/1 and addenda):
    - (i) Turkey (SCM/1/Add.28)
    - (ii) Australia (SCM/1/Add.18/Suppl.3 and 4)
    - (iii) Colombia (SCM/1/Add.29)
    - (iv) Chile (SCM/1/Add.16/Rev.2)
    - (v) Other legislation
  - B. Notification of subsidies under Article XVI:1 of the General Agreement.
    - (i) New and full notifications (L/6630 and addenda)
    - (ii) Updating notifications due in 1991 (L/6805 and addenda)
  - C. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1991 (SCM/119 and addenda)
  - D. Reports on all preliminary or final countervailing duty actions (SCM/W/236, 239 and 243)
  - E. United States - Countervailing duties on non-rubber footwear from Brazil - Report by the Panel (SCM/94 and SCM/96)

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<sup>1</sup>The term "Agreement" means Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

- F. Other panel reports pending before the Committee:
- (i) Canada - Imposition of countervailing duties on imports of manufacturing beef from the EEC - Report of the Panel (SCM/85)
  - (ii) EEC subsidies on export of wheat flour - Report of the Panel (SCM/42)
  - (iii) EEC subsidies on export of pasta products - Report of the Panel (SCM/43)
  - (iv) United States - Definition of industry concerning wine and grape products - Report of the Panel (SCM/71)
- G. Draft guidelines on the application of the concept of specificity (SCM/W/89)
- H. Other business
- (i) United States - Measures affecting the export of softwood lumber from Canada
  - (ii) United States - Measures affecting the export of pure and alloy magnesium from Canada
- I. Annual review and Report to the CONTRACTING PARTIES

A. Examination of countervailing duty laws and/or regulations of signatories of the Agreement (SCM/1 and addenda)

- (i) Turkey (SCM/1/Add.28)

3. The Chairman recalled that the Committee had examined this legislation at its meetings of 26 October 1989 (SCM/M/44, paragraphs 33-35), 24 April 1990 (SCM/M/46, paragraphs 19-22), 25 October 1990 (SCM/M/48, paragraphs 12-16) and 1 May 1991 (SCM/M/51, paragraphs 6-12). Since the May 1991 meeting, further questions on the Turkish legislation had been submitted by Australia (SCM/W/237) and Turkey had responded to these and other questions (SCM/W/238 and 240). The United States had recently submitted questions (SCM/W/246).

4. The representative of Turkey drew attention to the questions raised and concerns expressed by Australia (SCM/W/237) that the requirement for providing evidence before the initiation of "ex-officio" investigations, as set out in Article 2:1 of the Subsidies Code, had not been covered by Article 4 of the Turkish Law on the Prevention of Unfair Competition in Importation. Turkey's reply (SCM/W/240) had been that an "ex-officio" investigation could only be initiated if it was determined that there was

injury caused by dumped and/or subsidized imports. The provision related to this matter was included in Article 10 of the Turkish Law. Furthermore, in the determination of injury, the provisions of the Subsidies Code were also taken into account since the Code had been ratified by the National Assembly. His delegation regretted that it had not been possible to submit a written response to the questions raised by the United States (SCM/W/246) due to the short time. However, he would reply orally to those questions and would submit a written response shortly. (1) The phrase "impairment of the market" was found in several articles of the Turkish legislation and had caused some confusion, as pointed out by the United States. However, in the implementation of this legislation, measures were taken only when a dumped and/or subsidized product caused or threatened to cause material injury to the domestic industry. An amendment which would delete the phrase in question from the text of the legislation was under consideration. (2) The second paragraph of Article 11 of Law No. 3577 stated that "the suspension of the investigation shall not prevent that provisional measures previously adopted be made into definitive measures". This paragraph was not directly related to the violation of, i.e. the failure to fulfil, an undertaking - this was covered under Article 13 of the Regulation on the Prevention of Unfair Competition in Importation - but rather to cases where a provisional measure was adopted before the acceptance of an undertaking. Under the provisions of the Article, provisional measures could be applied as definitive measures, according to the data obtained, injury determined and undertaking offered.

5. The representative of the United States thanked Turkey for its quick response to the United States' questions. His delegation looked forward to reviewing Turkey's written responses and to the possibility of a notification from Turkey regarding the proposed amendment concerning the term "impairment of the market".

6. The Chairman invited delegations wishing to revert to this matter to submit their questions or comments in writing by 20 January 1992 and requested the delegation of Turkey to provide written replies to such questions by 2 March 1992. The Committee took note of the statements.

(ii) Australia (SCM/1/Add.18/Rev.1/Suppl.3 and 4)

7. The Chairman recalled that the Committee had examined a communication from Australia concerning amendments to Australia's countervailing duty legislation at its meetings of 25 October 1990 (SCM/M/48, paragraphs 17-19) and 1 May 1991 (SCM/M/51, paragraphs 13-17) and had agreed to revert to this item at the present meeting. Australia had submitted a further communication on this subject in September 1991 (SCM/1/Add.18/Rev.1/Suppl.4). Written questions had been submitted by Canada (SCM/W/234), and a communication had been received from the EEC (SCM/127).

8. The representative of Australia asked the delegation of Canada and the Committee for more time in order to prepare a detailed response to Canada's questions. He pointed out that the legislation in question was not new as

such. Its purpose in transferring a series of existing sections of the 1975 Customs Tariff Anti-dumping Act into the relevant part of the 1901 Customs Act was to avoid possible difficulties with an Australian constitutional requirement. Information on this matter had been presented by Australia at the October 1990 Anti-dumping Committee meeting (ADP/M/31, paragraph 6). Regarding the communication from the EEC (SCM/127), this issue had been raised in the meeting of the Anti-dumping Committee the previous day, and he had little to add to what Australia had said in that context. Australia had only recently received the EEC communication and needed more time to prepare a final response. It would therefore be inappropriate to deal with this matter at the present stage. However, his delegation wanted to make the following observations. In considering these changes to the legislation, his Government had been very conscious of its GATT obligations. It was Australia's firm intention that the legislation would be administered in a manner consistent with Australia's GATT and Code obligations. In Australia's view, the legislation was fully consistent with the Subsidies Code definition of "domestic industry" and provisions on "like product".

9. The representative of the EEC recalled that his delegation had raised this issue at the Committee's May 1991 meeting, although at that time the Australian legislation had not yet been enacted. The Community had stated its great concern over the announcement of this legislation and had drawn attention to the fact that existing GATT and Code rules on this subject were quite clear. The legislation had now been enacted, and the Community remained firmly of the view that this made Australian legislation totally inconsistent with the General Agreement and the Code. The Subsidies Code defined "domestic industry" for the purpose of determining injury in Article 6:5 which had to be read in conjunction with the definition of "like product" in Footnote 18 to Article 6:1 of the Code. In the Community's view, Clause 7 of the 1991 Customs Amendment Act, by extending this definition to producers of what was clearly not a like product, however economically related to the imported product it might be, was clearly inconsistent with the requirements of Article 6:5 and Footnote 18 of the Code. This in turn constituted a violation of Australia's obligations under Article 1 of the Code to ensure that the imposition of a countervailing duty was in accordance with the provisions of Article VI of the General Agreement and the terms of the Subsidies Code. Should the Australian authorities impose a countervailing duty according to Clause 7 of the legislation, that duty would automatically be in violation of the provisions of Article VI as implemented by the Subsidies Code. The only precedent the Community had for a provision of this kind was the definition of industry for wine and grape products in the United States Trade and Tariff Act of 1984. He recalled that the Community had successfully challenged the conformity of that provision with the Code and the GATT. Unfortunately, the validity of that provision had expired shortly thereafter, and no further trade disputes had arisen under it. The Community wanted to draw the attention of the Committee and of the Australian authorities to the serious violation of Code disciplines on the use of countervailing duties which enactment of this provision implied.

The Community reserved the right to take any further action it might deem appropriate under the GATT and the Code and wanted to hear the views of other signatories on this important issue.

10. The representative of the United States said that his delegation looked forward with interest to receiving Australia's written response to the EEC's communication. This interest was without prejudice as to the issues of whether Australia's legislation was or was not consistent with its GATT obligations or whether or not it was similar or identical to existing US legislation.

11. The representative of the EEC said that the Community's position on the Australian legislation was without prejudice as to its position on the existing US legislation which might bear some resemblance to the provisions under discussion.

12. The Chairman invited delegations wishing to revert to this matter to submit their questions or comments in writing by 20 January 1992 and requested the delegation of Australia to provide written replies to such questions by 2 March 1992. The Committee took note of the statements.

(iii) Colombia (SCM/1/Add.29)

13. The Chairman recalled that Colombia had introduced the Colombian countervailing duty legislation at the Committee's meeting on 1 May 1991 (SCM/M/51, paragraphs 22-25). Written questions had been submitted by the United States (SCM/W/245).

14. The representative of Colombia responded to the United States' questions in SCM/W/245 as follows: (1) Article 1 of Decree 2444 stated that "individuals must show a legal interest in order to request the initiation of administrative proceedings or to take part in them...." The Handbook of Complaint Procedures defined the term "legal interest" as "the relationship between the interested party and the injury or the threat of injury resulting from unfair trade practices". The United States' questions on this term related to the Handbook of Complaint Procedures, which was not a matter of legislation but of regulations. From the procedural standpoint, the term "legal interest" in the context of this Decree meant that while an investigation of this kind was carried out in the general or public interest to defend the domestic industry as a whole, any party requesting an investigation had to show some direct or indirect interest in the dumping or subsidy investigation. (2) Article 6 of Decree 2444 stated that "an import is considered as having been subsidized when the production, manufacture, transport or export of the imported good or of its raw materials and inputs has received directly or indirectly any bounty, aid, premium, or subsidy from the government of the country of origin or of export, or from its public or semi-public agencies". Regarding the United States' question on this Article, she said that her authorities did not yet have any experience with this instrument, since it had been in force for barely a year and no subsidy case had been carried out. Nevertheless, for this provision to apply it would be necessary to

show that the subsidy bestowed on an input had resulted in a subsidy to the final-stage good, as well as the incidence of that subsidy on the price of the final good. The method of making this calculation would be included in the regulations currently being prepared. (3) Regarding Article 9 of Decree 2444, she said that the United States' question might have resulted from a problem of mistranslation or misunderstanding, since the Decree stated that "like product" means a product which is identical, i.e. alike in all respects to the product under consideration, or a product which has characteristics closely resembling those of the product under consideration, taking into account elements such as its nature, quality, use and function. This language tracked with the language in Footnote 18 to Article 6 of the Subsidies Code, i.e. that the like product was a product which had characteristics closely resembling those of the product under consideration. This definition had the same meaning as the definition in the Subsidies Code. (4) Regarding the question of whether the Colombian authorities are required to give public notice of a decision to initiate an investigation, but not of a decision to accept a complaint (Articles 17, 20 and 21 of the Decree), she said that when a complaint was submitted, it was evaluated from a formal standpoint to ensure that it satisfied the requirements of Article 17 of the Decree. The investigating authority had 15 working days in which to carry out this evaluation and accept the complaint or request further information. In the latter case, the complainant had two months in which to provide the information requested; failure to do so would be understood to mean that he was withdrawing his complaint. This was without prejudice to the fact that he could resubmit his complaint at any time. While these terms were not set forth in Decree 2444, that Decree was enacted within the framework of the domestic legislation. A request for an investigation was submitted in exercise of the right of petition in the general interest; under the domestic administrative law, anyone could duly petition the authorities, and the latter had to reply. The regulations governing this procedure were contained in Colombia's Administrative Litigation Code. Decree 2444 regulated these investigations as taking place in the exercise of the right of petition, with the specific features of processes of this type embodied in the international rules governing such matters. In the case of matters not provided for in the Decree, the Administrative Litigation Code applied as the general supplementary rule: the 15-day and two-month periods were established in that Code. Once it had been established that the complaint satisfied the formal requirements, INCOMEX accepted the complaint and began to evaluate the facts of the matter in order to determine whether there were grounds for opening an investigation, as provided for in Articles 20 and 21 of the Decree. During this stage it sought to determine whether the possibility of the existence of the practice, injury or threat of injury, and cause-and-effect relationship could be inferred from the evidence submitted. It might be determined, for example, that although dumping existed, the injury or threat of injury was not the consequence of that dumping, since in any event the price of the imported good was much higher than that of the domestic product, or else that the product was not a like product. This was an evaluation of the substance or content of the complaint - to see whether there were grounds for investigating the case - which had to be carried out within a period of two months. The Colombian

authorities had to give public notice of their decision to initiate an investigation, but not of the receipt of a complaint; this was consistent with Article 2:3 of the Subsidies Code. (5) Regarding the question as to whether there were any explicit statutory or regulatory provisions to limit the duration of provisional measures, consistent with Article 5:3 of the Subsidies Code, she said that there were no explicit provisions, although the possibility of such provisions was under study. However, as Colombia had acceded to the Subsidies Code, it was bound to fulfil that provision of the Code, since the final paragraph of Article 30 of the Decree stated that in aspects not regulated by the Decree, the relevant rules of international agreements shall apply. (6) With regard to Article 27 of the Decree and the different levels of authority, she said that this article could not be considered out of context: the fact that the Trade Practices Committee gave its opinion on the results of the investigation and that the Ministry of Economic Development adopted the appropriate decision could not be understood to mean that they could ignore the technical elements on which the results of the investigation were based. Nevertheless, when it saw fit, the Ministry could decide not to impose a duty or to impose a duty for less than the margin of dumping or amount of the subsidy. This was consistent with Article 4:1 of the Subsidies Code, which stated that it was desirable that the imposition of a duty be permissive in the territory of signatories and that the duty be less than the amount of the subsidy if that was adequate to remove the injury. (7) Regarding the second paragraph of Article 27 which stated that "the resolution shall state the conditions governing the duration of the duties imposed, where appropriate", she said that as stated in the previous reply, a provision could not be interpreted out of context, and this part of Article 27 was entirely in keeping with Article 30, paragraph 2, of the Decree and Article 4:9 of the Subsidies Code. This enabled the authority to apply the prescription clause administratively when it determined that the imposition of the duty for a predetermined period would be adequate to remove the injury. (8) Regarding the question as to the application of Article 28, paragraph 2, within the context of a price undertaking, she said that this paragraph referred to undertakings which the Colombian authorities could accept, including price undertakings, although not exclusively. It could refer to undertakings under which the practice was not entirely eliminated, because exporters and producers only offered to revise their prices partially and did not entirely remove the subsidies causing the injury. (9) Regarding the reference, "best information available", in Article 29, she said that this expression had exactly the same meaning as Article 2:9 of the Subsidies Code and Article 27 of Decree 2444; it was simply a repetition of that provision and meant nothing else. (10) Regarding the final paragraph in Article 30 and the continuous monitoring of the behaviour of imports of goods that have been subject to dumping or subsidy investigations, she said that what was meant by this paragraph was that INCOMEX would monitor imports of the products investigated during the investigations and after their conclusion when the product was subject to anti-dumping or countervailing duties. However, the way this paragraph was drafted could give rise to misunderstanding, and her authorities were studying the possibility of clarifying it, because

there was a need to monitor imports of products subject to anti-dumping or countervailing duties and the fulfilment of undertakings. (11) Regarding the question as to whether the introductory section of the Handbook of Complaint Procedures meant that the information contained in the complaint was somehow verified before a complaint was accepted, she said that this depended on the meaning attached to the word "verify". The verification of the complaint before it was accepted was a purely formal matter: checking that the documents were originals or duly authenticated, and referring to all the points mentioned in Article 17 of the Decree, including those relating to the practice, injury or threat of injury and causality.

15. The representative of the United States expressed his delegation's appreciation for the degree of detail which had been provided by the representative of Colombia, particularly given the fact that the United States' questions had been only recently submitted and were quite extensive. The United States looked forward to receiving Colombia's written responses, in particular with respect to the possibility of clarification, in the evolution of the legislation, regarding matters such as input subsidies. He said that it had been helpful for his delegation to examine legislation which had been provided in such extensive detail, and that the number of questions raised by the United States reflected the amount of information provided and not any level of criticism of the legislation.

16. The representative of the EEC said that his delegation also appreciated the information provided by Colombia. The Committee looked forward to the written responses and sought several clarifications on the information presented orally by Colombia. Regarding Article 28 of the Decree and the possibility of applying a lesser duty than the full amount of the subsidy if that were sufficient to remove the injury, the legislation seemed to be unusual in that it reproduced exactly the Subsidies Code in making this provision optional. Most signatories had chosen one or the other option. He asked whether Colombia already had some idea of what criteria the Ministry would apply in deciding on a case-by-case basis whether to impose lesser duties or not. Secondly, regarding Article 29 which referred to injury caused by massive imports of the subsidized product, he asked for clarification of the phrase "provided the subsidies were bestowed inconsistently with the provisions of Law 49 of 1981 or of this Decree".

17. The representative of Colombia asked the Community to submit these questions in writing, but gave the following preliminary reply: regarding the optional imposition of a lesser duty, this would be considered on a case-by-case basis depending on the decision taken by the Ministry; regarding the second question, she said that Law 49 of 1981 was the one which included Colombia's general tariffs on trade.

18. The Chairman invited the United States and the EEC to put their questions in writing. She invited delegations wishing to revert to this matter to submit their questions or comments in writing by 20 January 1992

and requested the delegation of Colombia to provide written replies to these questions by 2 March 1992. The Committee took note of the statements.

(iv) Chile (SCM/1/Add.16/Rev.2)

19. The Chairman recalled that at the Committee's meeting on 1 May 1991, Chile had introduced the amendments to Chile's countervailing duty legislation (SCM/M/51, paragraphs 26-28). Written questions had been submitted by the United States (SCM/W/244).

20. The representative of Chile said that the reason for the notification in SCM/1/Add.16/Rev.2 was a change in the national authority competent to investigate complaints concerning subsidized imports. She said that the Subsidies Code had been law in Chile since the time it had been ratified and promulgated in 1981; accordingly, its procedures and criteria had been applicable since that date, and the National Commission responsible for investigating the existence of distortions in the prices of imported goods, which was now the authority responsible for examining subsidies complaints, operated in accordance with that Code. She then responded to the United States' questions as follows: (1) The only measures used by Chile to counteract subsidized imports that were causing injury to domestic industry were countervailing duties, which were applied in accordance with the procedures and criteria set forth in the Subsidies Code. The tariff surcharges were tariffs at specified percentage rates which were applied generally to imports which caused or threatened serious injury to the domestic industry by entering at below normal prices as a result of artificial effects in their respective markets. This measure was applied when general distortions existed in international markets. The relevant amount plus the tariff could not exceed 35 per cent of the tariff bound in GATT. Minimum customs values were used in situations where, because of circumstances originating in international markets, normal transaction prices were temporarily below normal and imports were causing or threatening serious injury to the domestic industry. The minimum customs value was a normal value that corrected the basis to be used for calculating tariffs and value-added tax. The combined or separate application of these measures would depend on each particular case and would be directly related to the nature of the distortions found to exist. Their maximum period of application was one year. (2) The different terminology used in the legislation and regulations regarding injury to the domestic industry did not indicate varying categories of injury and should be understood as meaning injury to the domestic industry. (3) The term "distortions in the price of goods" should be understood as including distortions caused by subsidies, in addition to other distortions such as dumping. (4) The term "any natural or legal person affected" meant the legal representatives of the complainant undertakings, professional associations in the injured sector, etc., and any agent having economic interests associated with the industry or sector alleged to be affected by the unfair competition, provided it represented a substantial share of the

domestic industry. (5) The Commission could recommend the application of a provisional countervailing duty once it reached the preliminary conclusion that a subsidy existed, that there was sufficient evidence of injury and that there was a cause-and-effect relationship between the subsidized imports and the injury. She said that it should be kept in mind that the maximum period of application for a provisional measure was ninety days.

21. The representative of the United States asked for clarification regarding the circumstances under which countervailing duties could be applied jointly with other measures. With reference to the fact that minimum customs values were based on imports entering at below normal prices, he asked if steps were taken to distinguish the extent to which a below normal price might be accounted for by subsidies, or whether these were overlapping measures. He asked Chile to clarify this question of joint application.

22. The representative of Chile said that when there was a subsidized import, countervailing duties were applied. In certain cases, a minimum customs value was applied, together with other measures, such as surcharges, depending on the type of distortion which had been determined; however, this measure was not applied for subsidized imports as such. There might be certain situations involving dumping which had not been fully corrected through these remedies, but with a minimum customs value it was possible to correct the situation for the purposes of the internal value added and for applying the normal applicable tariff.

23. The Chairman invited delegations wishing to revert to this matter to submit their questions and comments in writing by 20 January 1992 and requested the delegation of Chile to provide written replies to such questions by 2 March 1992. The Committee took note of the statements.

(v) Other legislation

24. The representative of the United States drew the Committee's attention to the fact that his delegation had notified to the Committee on Anti-dumping Practices final regulations of the US International Trade Commission regarding procedural aspects of the Omnibus Trade and Competitiveness Act of 1988. Those same regulations would be applicable in the context of countervailing duty remedies, and the United States would expeditiously notify those regulations to the Subsidies Committee.

25. The Committee took note of the statement and agreed to maintain this item on its agenda in order to allow signatories to revert to particular aspects of national countervailing duty laws and regulations at a later stage.

B. Notification of subsidies under Article XVI:1 of the General Agreement

(i) New and full notifications (L/6630 and addenda)

26. The Chairman recalled that in accordance with the Decision of the CONTRACTING PARTIES (BISD 11S/58), every contracting party should have submitted, in 1990, a new and complete notification of subsidies. The Committee would hold a special meeting in 1991 to examine new and full notifications due in 1990 and submitted in response to the request circulated in L/6630. So far such notifications had been received from Hong Kong (Add.1), Australia (Add.2), Turkey (Add.3), Canada (Add.4), Chile (Add.5), Japan (Add.7 + Corr.1), Norway (Add.8 + Corr.1), New Zealand (Add.9), Finland (Add.10), Switzerland (Add.11), Austria (Add.12), Sweden (Add.14), Korea (Add.15), Yugoslavia (Add.16), the United States (Add.17), Philippines (Add.18), Egypt (Add.19), the EEC (Add.20), Brazil (Add.21/Rev.1) and Israel (Add.22). No new and full notification had been received from Colombia, India, Indonesia, Pakistan and Uruguay. As Chairman, she needed to know when these missing notifications would be available. She therefore asked each of the above-mentioned delegations when she might expect to receive such notifications so that the Committee could discharge its responsibilities effectively.

27. The representative of Colombia said that restructuring in the external trade area had prevented Colombia from complying with its notification obligations under the Code. However, the necessary internal co-ordination was being undertaken to ensure that the notification on subsidies would be submitted shortly. The representative of Indonesia said that he had contacted his capital on this issue and was awaiting the report. The representative of Uruguay said that she had just received information from her capital that Uruguay had not granted or maintained any subsidy schemes during 1990. A formal notification would be submitted shortly.

28. The representative of the EEC said that certain contracting parties which were not signatories of the Subsidies Code had never made notifications of subsidies under Article XVI:1 of the General Agreement. It seemed that while the appropriate venue for this might be the GATT Council, the Committee should at least receive these notifications. In particular, the Committee had never seen a notification from Singapore. The secretariat responded that the procedures under Article XVI:1 applied to all GATT contracting parties. The Subsidies Committee had decided to pay special attention to notifications by signatories and by observers. No notification of subsidies had been received from Singapore.

29. The Chairman noted that the Committee's review of new and full notifications should have been carried out early in 1991. Consequently, she urged the five delegations which had not yet submitted their notifications to do so as soon as possible. She suggested that the Committee hold a special meeting before the end of November in order to carry out this review, and drew attention to the statement by the Chairman at the meeting of 24 April 1990 (SCM/M/46, paragraphs 35-36) and at the meeting of 1 May 1991 (SCM/M/51, paragraph 53). The Committee took note of the statements.

(ii) Up-dating notifications due in 1991 (L/6805 and addenda)

30. The Chairman recalled that updates to the new and full notifications for 1990 had been received from the following delegations: Hong Kong (Add.1), Japan (Add.2), Austria (Add.4), Brazil (Add.5) and Chile (Add.6). She encouraged those delegations which had not submitted such updating notifications for 1991 to do so as soon as possible.

C. Semi-annual reports of countervailing duty actions taken within the period 1 January-30 June 1991 (SCM/119 and addenda)

31. The Chairman recalled that an invitation to submit semi-annual reports under Article 2:16 of the Agreement had been circulated in SCM/119. Document SCM/119/Add.1 listed those signatories which had notified that during the period 1 January-30 June 1991 they had not taken any countervailing duty action. These signatories were: Austria, Brazil, Colombia, Egypt, Finland, Hong Kong, Israel, Japan, Korea, Norway, Sweden, Switzerland, Turkey and Yugoslavia. The following signatories had notified countervailing duty actions: New Zealand (SCM/119/Add.2), Canada (SCM/119/Add.3), United States (SCM/119/Add.4), Australia (SCM/119/Add.5) and Chile (SCM/119/Add.6). No report had been received from: the EEC, India, Indonesia, Pakistan, Philippines and Uruguay.

32. The representative of the EEC said that the Community had taken a provisional countervailing duty action on 27 May 1991 on certain polyester fibre yarn from Turkey. This had not been notified because the Community had hoped to notify a final decision before the deadline for notifications, but the decision had been taken only on 23 September 1991. The investigation had been terminated following an undertaking agreed by Turkey regarding the subsidies which the Community had found to be countervailable. This information would be confirmed in writing.

33. The representative of Uruguay informed the Committee that she had just received information from her capital indicating that Uruguay had not taken any countervailing duty action during the period 1 January-30 June 1991. A formal notification would be submitted shortly.

34. The Chairman expressed her concern over the continued failure of some signatories to observe their obligations, and suggested that the Committee reflect on whether it should continue to tolerate a situation in which there were two categories of signatories - those who always fulfilled their obligations and those who regularly failed to do so.

35. The representative of Canada noted that the only action taken by Canada in the period under review had been a revocation.

36. No comments were made on the semi-annual reports submitted by New Zealand, the United States, Australia and Chile.

37. The Committee took note of the statements.

D. Reports on all preliminary or final countervailing duty actions  
(SCM/W/236, 239 and 243)

38. The Chairman said that notices of countervailing duty actions had been received from the delegations of Chile and the United States.

39. No comments were made on these notices.

E. United States - Countervailing duties on non-rubber footwear from Brazil (SCM/94 and 96)

40. The Chairman recalled that the Committee had examined this report at its meetings of 26 October 1989 (SCM/M/44, paragraphs 86-95), 24 April 1990 (SCM/M/46, paragraphs 41-55), 25 October 1990 (SCM/M/48, paragraphs 52-62) and 1 May 1991 (SCM/M/51, paragraphs 64-75). The Committee had agreed in May to revert to this report at the present meeting.

41. The representative of the United States recalled that this was the fifth time this panel report had been before the Committee. His delegation had commented on the report on numerous occasions and would not repeat those arguments. The United States hoped that Brazil was in a position to agree to adopt the report without any further delay.

42. The representative of Brazil said that his delegation's views on this matter were well known. Brazil considered that the Panel report contained elements which gave rise to serious misgivings, and other delegations had agreed with this and with the view that the Committee should await the outcome of the ongoing Article XXIII proceedings before taking any action in the present context.

43. The representative of the United States expressed his delegation's disappointment that Brazil's position had not changed. The United States found it unusual that the Article XXIII proceeding had been mentioned as a rationale for the delay, since Brazil had said repeatedly that the two proceedings were not substantively related. While the report would not be adopted at the present meeting because of Brazil's position, the United States would persevere and hoped that the report could be adopted in the near future. He asked that this item be put on the agenda for the Committee's next meeting, and reserved the right to request a special meeting of the Committee to consider this item.

44. The Committee took note of the statements and agreed to revert to this item at its next meeting.

F. Other panel reports pending before the Committee

- (i) Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC (SCM/85);
- (ii) EEC subsidies on export of wheat flour (SCM/42);

- (iii) EEC subsidies on export of pasta products (SCM/43);
- (iv) United States - Definition of industry concerning wine and grape products (SCM/71)

45. The Chairman recalled that at the Committee's meeting in May 1991, she had indicated that she would continue her efforts to find a practical solution to the problem of the four panel reports which were pending before the Committee (SCM/M/51, paragraph 93). She noted that these reports had been pending for periods ranging from five to eight years, and that a series of no less than five Chairmen, including herself, had made repeated efforts to find a practical solution to this situation. She said that the blockage of the dispute settlement mechanism in the Committee not only had negative consequences for the functioning of the Committee itself, but might also have wider consequences for the dispute settlement mechanism of the General Agreement. Another dangerous phenomenon was that the growing frustration with the operation of the Subsidies Agreement had caused some countries to take countermeasures or to have recourse to bilateral arrangements outside the GATT. This could only weaken the international agreement to which signatories had contributed in good faith. This situation was particularly disturbing because the signatories directly involved were those who, as major trading partners, had a special responsibility for the functioning of the Committee and the implementation of the Agreement. She recalled that already in May 1988, the then Chairman of the Committee had suggested a possible scenario according to which these outstanding panel reports could be dealt with. That scenario was as follows: all parties directly involved would take steps to remove adverse trade effects of the incriminated measures. Once this had been done, all four reports would be adopted at the same meeting, each adoption accompanied by an understanding that the legal issues resulting from each report should be further considered in the multilateral negotiations and that adoption of each report should not prejudice, in any way, the outcome of those negotiations, nor should it prejudice the position of any signatory in relation to those negotiations. Subsequent Chairmen had conducted numerous consultations with the parties on that basis, all without success. She now found herself in the position of having to report to the Committee that her own efforts in such informal consultations had not yielded any positive result. However, she had agreed at the Committee's May meeting to make a detailed report of these consultations. Her report was as follows: Since the Committee's most recent meeting she had held three informal consultations with the three parties concerned - Canada, the EEC and the United States - on 1 May, 24 July and 14 October 1991, at which a scenario for the resolution of this problem had been discussed. This involved the removal of all adverse trade effects of the measures in question by all three parties. This scenario had been accepted in principle by the United States and the EEC, which had already taken steps to this effect with regard to the panel reports on the export of wheat flour, on the export of pasta products, and on the definition of industry for wine and grape products. However, there had been no movement with regard to the panel report on manufacturing beef. She understood that there had been senior level meetings between Canada and the EEC on this

issue, and that further meetings were scheduled. While Canada had indicated that it was taking steps toward resolving this trade issue, the measure was still in effect and had recently been extended for a period of five years. Thus, without some movement regarding the dispute on manufacturing beef, no further steps could be taken under the scenario used in her consultations, and therefore the blockage would remain. The removal of adverse trade effects of the measures in question was the essential core of this scenario, and no other scenario had been proposed. As this condition had not been fulfilled, she saw no point in continuing these consultations and in giving the illusion of progress when, in fact, for at least four years such consultations had yielded no positive result. Therefore, she could only report failure, with all the negative consequences this portended.

46. The representative of New Zealand said that her delegation was very disappointed by the Chairman's report that it had not been possible to overcome the blockage in dispute settlement caused by the four unadopted panel reports. At the Committee's May meeting, her delegation had expressed considerable concern over the length of time this item had been on the Committee's agenda, and had pointed out that this was a matter of principle, rather than individual merits or trade interests. New Zealand had fully endorsed the Chairman's rôle as a mediator in the efforts of the parties to reach a mutually acceptable solution allowing for the unblockage of the process, and it was worrying that so far no resolution had been reached. This had serious implications for the credibility of the dispute settlement procedures under the Subsidies Code, and potential effects on the ability of signatories to seek appropriate recourse to these procedures should their rights under the Code be adversely affected. New Zealand was also concerned over the potential spread of the disease both under the Code and into other areas of the General Agreement. Regrettably, the fact that key reports remained outstanding provided a ready excuse for other parties to hold out on adoption of other panel reports. Her delegation agreed with the Chairman's conclusion that there was no point in continuing the attempts to reach a solution at this stage, given that the core element in the scenario under consideration could not be met. Her delegation could only express its concerns and note that a key phase of the Uruguay Round negotiations was approaching. With the conclusion of the Round, at least one of the reasons given for the delay in this matter would be removed. She pointed out that signatories were bound by the Subsidies Code rules as they currently existed, and with the conclusion of the Round resulting in improved rules, signatories would be bound by those new multilaterally agreed rules. New Zealand urged the parties concerned to continue their bilateral and plurilateral contacts in an effort to overcome this impasse in a manner acceptable to the Committee.

47. The representative of Colombia said that the principal objective of GATT was to afford a stable legal order allowing orderly progress toward trade liberalization in a framework that included the settlement of disputes in the area of international trade. The panel was the most important stage in the dispute settlement process, but experience to date

had not been the best - time limits were rarely met, and worse, the implementation of panel recommendations increasingly encountered obstruction from the affected party, especially if the latter was a major trading partner. Indeed, a direct relation could be seen between the tendency to block the adoption and implementation of panel reports, and the economic importance of the party concerned. He said that it was both contradictory and disheartening that the major powers supported in theory a dispute settlement system which they professed to consider as essential for ensuring security and predictability in the international trading system and, at the same time, blocked and thereby destroyed that dispute settlement system. Such behaviour could not continue. Accordingly, Colombia was making a call to order, and for its part, would do all it could to uphold multilateralism that included a strong and balanced dispute settlement system.

48. The representative of Austria expressed his delegation's gratitude for the Chairman's efforts to resolve this problem. Austria agreed with the Chairman's statement about the negative consequences of this situation, and regretted the conclusion that her efforts had met with failure. However, this failure should not be due to one single report, and his delegation appealed to the party particularly concerned to accommodate its position so as to allow a resolution of the overall situation.

49. The representative of Finland, on behalf of the Nordic countries, said that the Nordic countries had followed with concern the continuing appearance on the Committee's agenda of these four panel reports. The parties concerned had several times been urged to reach a mutually satisfactory solution enabling the adoption of these reports. The linking of the adoption of these four panel reports had been agreed upon as a means to facilitate a solution in each case and thus to enable the adoption of all four reports. The latest development did not, however, seem to have brought a solution any nearer, and the Nordic countries could only express their deep concern over the effects this non-adoption had for the credibility of the dispute settlement system as a whole. They stressed the need for all parties to do their utmost to support the international trading system of which the dispute settlement system was a fundamental part. That system had to be effective if parties were to be expected to rely on it; it had to be equitable and guarantee, in cases of disputes, the same rights and obligations for all contracting parties. The present practice fell short of these objectives. It was a positive sign that in the Uruguay Round negotiations the need for an effective dispute settlement system seemed to be an objective of all contracting parties; however, this need and objective were hardly reflected in practice. The Nordic countries urged the parties to the disputes at hand to do their utmost to adopt the panel reports. These parties were major players in international trade and should set the pace; however, their example, reflected by these four cases, was hardly encouraging. If panel rulings were accepted only when they did not conflict with existing legislation, procedures and practices, the purpose of the dispute settlement system would be lost.

50. The representative of Korea expressed his delegation's disappointment over the content of the Chairman's report and reiterated Korea's previously expressed concern over this matter. Korea was very worried about the present and future effectiveness of the Subsidies Code and of dispute settlement as a whole, and encouraged the parties concerned to continue their efforts to reach a mutually acceptable solution.

51. The representative of Chile said that her delegation shared the concern expressed by previous speakers. This was a matter of particular importance to Chile. Her delegation was very concerned by the Chairman's report, and again urged the parties concerned to try to reach an agreement amongst themselves and thus to help strengthen the dispute settlement mechanism in GATT by implementing the Panel recommendations.

52. The representative of Japan said that his delegation shared the Chairman's concern and disappointment with regard to this issue. This situation damaged the credibility of the dispute settlement system of the Subsidies Code and of the GATT itself. Japan urged the parties concerned to make further efforts to find a mutually acceptable solution.

53. The representative of the EEC said that the Community subscribed to the Chairman's initial statement and was concerned over the failure of the efforts made. The Community shared the concern outlined by the Chairman and echoed by a number of delegations. One of the functions of the dispute settlement mechanism was to examine important issues of principle; however, having a panel disagree with one's position did not mean one was convinced of the panel's view. The Uruguay Round negotiations had provided an opportunity to discuss, debate and possibly resolve these disagreements on principle, and that opportunity still existed. The other function of the dispute settlement mechanism was to solve trade disputes, and in the Community's view, this was the primary function. He pointed out that in older cases involving the EEC, a solution to the trade dispute underlying the case had been found within a relatively, if not very, short time frame. Subsequently, the Community had expressed a readiness to consider the practical solution which had been proposed, as well as the scenario outlined by the Chairman or any other alternative that might be put forward. However, it had always been difficult for the Community to give due consideration to this aspect absent the resolution of the trade disputes involved, particularly in the case involving Canada's countervailing duties on beef imports, since the Community's exports of beef to Canada had virtually ceased more than five years earlier. Under these circumstances, the Community could only respond that it had been, and continued to be, willing to try to seek a solution to these matters. The Community was hopeful that the current round of bilateral talks would produce a result enabling it to move forward, although this had not been the case so far.

54. The representative of Canada assured the Committee that Canada remained committed to the integrity of the GATT dispute settlement system. As the Chairman had noted, Canada continued to work bilaterally to find a solution to the matter of the outstanding panel report involving Canada,

which included a recent meeting at senior level. However, he pointed out that the trade effects were only one element of the problem, and that the Panel report clearly raised issues of principle which Canada trusted could be resolved in the multilateral trade negotiations and could provide the basis for a solution to the problem.

55. The Chairman said that while she had admitted failure on her part to try to find a solution to this matter, she hoped that the parties concerned would continue their efforts to resolve this problem, particularly the bilateral contacts to which she had alluded and which had been confirmed by the delegations of the EEC and Canada. Perhaps her successor would be able to remove this item from the agenda of the Committee's next regular meeting.

56. The Committee took note of the statements.

G. Draft guidelines on the application of the concept of specificity  
(SCM/W/89)

57. The representative of the United States recalled his delegation's remarks at the Committee's May meeting (SCM/M/51, paragraph 95). The United States' position remained fundamentally the same as that expressed in May. Whereas the United States continued to apply the concept contained in SCM/W/89, it was not in a position to agree to adoption of these guidelines at the present time and looked forward to having this issue fully articulated and resolved within the Uruguay Round negotiations.

58. The Committee agreed to keep this item on its agenda and took note of the statements.

H. Other business

(i) United States - Measures affecting the export of softwood lumber from Canada

59. The representative of Canada said that the United States had announced its intention to self-initiate a countervailing duty investigation of softwood lumber imports from Canada. This action represented the third such investigation of this industry in eight years. Simultaneously, the United States Trade Representative had taken action to withhold or extend liquidation of entries of softwood lumber products from Canada and had imposed a bonding requirement effective 4 October 1991. Canada considered that the US action was contrary to the Code, and did not accept that the assessment of a stumpage fee for harvesting standing timber constituted a subsidy. Canada had requested consultations with the United States on 8 October under Article 3:1 of the Code; these were held on 16 October. Unless the United States reversed its decision to self-initiate and removed immediately the bonding requirement, Canada would have no recourse but to seek conciliation under Article 17 of the Code. Should the United States proceed with the investigation, Canada would immediately request a special meeting of the Committee for such conciliation.

60. The Committee took note of the statement.

(ii) United States - Measures affecting the export of pure and alloy magnesium from Canada

61. The representative of Canada said that on 5 September 1991, the United States had accepted a petition for the imposition of anti-dumping and countervailing duties on imports of pure and alloy magnesium from Canada. In Canada's view, the United States had failed to demonstrate that the petitioner had sufficient standing to request the initiation of an investigation. Canada had delivered a diplomatic note to the United States disputing the acceptance of this petition on the grounds that the petitioner represented only 22 per cent of the industry and therefore did not have standing. Consultations had been held under Article 3:1 but had not been satisfactory. Should the matter remain unresolved, Canada would request a special meeting of the Committee for conciliation under Article 17 of the Code at an early date. He noted that Canada had also raised this matter in the Committee on Anti-Dumping Practices.

62. The Committee took note of the statement.

I. Annual Review and the Report to the CONTRACTING PARTIES

63. The Committee adopted its Report (1991) to the CONTRACTING PARTIES (L/6936).

Date of the next regular meeting

According to the decision taken by the Committee at its April 1981 meeting (SCM/M/6, paragraph 36), the next regular meeting of the Committee would take place in the week of 27 April 1992.